Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Tennessee State Department Of Education	)	Applicant ID No. 145698
	)	
Application (FCC Form 471) for Approval of Funding	)	Universal Service Control No. 144790000000004

To: The Commission

Administrator, Schools
and Libraries Corporation

REPLY TO OPPOSITIONS

Submitted by:

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REPLY TO OPPOSITIONS

Integrated Systems and Internet Solutions, Inc. ("ISIS 2000") hereby replies to the Oppositions filed April 20 and 21, 1998, respectively, by Educational Networks of America ("ENA") and the Tennessee State Department of Education ("Department") to ISIS 2000's Objection to Application and Request for Expedited Declaratory Ruling.

I. Introduction and Summary

Both the Department's and ENA's Oppositions fail to come to grips with the following three fundamental violations of USF Schools and Libraries funding rules, which permeate the ENA contract.

- First, on its face, the award of a contract for a $23 million higher pre-discount price (through a process not based on the objective evaluation of pre-discount price but which, to the contrary, favored the higher pre-discount price) violates the fundamental strictures of the competitive bidding rules. Through a wash transaction having no economic purpose or meaning other than to increase USF funding, the net effect of this serious violation, to which the Department and ENA have not even responded in their Oppositions, inflates the amount of USF funding by approximately $16 million.
- Second, the artful arrangement structured by ENA does not constitute funding-eligible "Internet access services" as that term is commonly understood. The argument that funding is required because there is no express rule against the scheme concocted by ENA ignores the central fact that the Commission is not obligated to define by rule every conceivable scheme or sham that will be deemed by the Commission to constitute an abuse of the Commission's rules. Terminology describing eligible services must be interpreted by generally accepted definitional concepts, rather

than be allowed to mask otherwise unallowable transactions.

- Third, the ENA contract is nothing more than a guise to fund the construction of a privately owned commercial wide-area network. Not only does this involve the funding of equipment far beyond "internal connections" that would be eligible for funding, but it more basically would have the USF fund provide all of the start-up capital for the commercial enterprise (with an estimated value of between $60 and $160 million) without obtaining any benefit to the public in return.

These violations of USF funding rules go to the heart of the ENA contract and require that the contract be found completely ineligible for USF funding.

This proceeding involves substantial policy questions regarding general applicability of Commission USF program funding rules, and the Commission's decision will have a significant impact on future USF funding decisions. If the ENA contract is approved for USF funding, the Commission will have opened the USF program to a potential superabundance of abuses. Entrepreneurs like ENA will be able to target the poorest schools under the guise of offering "Internet service" by buying or creating an existing school network for an inflated price, selling service over the network to the school and using the

inflated contract price to leverage USF funding at up to 90% rates to capitalize the construction of the entrepreneur's entire private commercial telecommunications network. The "public interest" - the touchstone for Commission action - requires the Commission to ensure that the USF program is protected against such abuse.

II. The ENA Contract Is Not For "Internet Access" Within the Scope Of the USF Program, But A Facade For The Funding Of A Privately-Owned Commercial Network Entirely Paid For By Public Funds.

In its opposition, ENA characterizes $74.4 million in charges to the Department and USF fund over a 3.5 year contract term as merely charges for "Internet access services." In reality, ENA has created a scheme whereby it will use public funds, including millions of dollars of USF program funds, to completely capitalize the start-up of its private commercial telecommunications business and construction of its statewide, high technology telecommunications network.

Attachment Q[1] is an "Economic Analysis" of the ENA contract prepared by an independent Internet industry financial expert at the request of ISIS 2000 ("Stapleton Analysis" or "Analysis"). Among other very significant

[1] Consistent with ISIS 2000's April 20th Supplement, documentary designations continuing from the last-used Attachment designation will be used to avoid confusion.

findings regarding the economic effects of the ENA contract, the Analysis concludes that once public funds have completely capitalized ENA's business and network, ENA will end up with a substantial statewide advanced telecommunications network having an estimated marketplace value of from $60 to $160 million.[2]

Nowhere does ENA deny this result. Nothing in the contract prevents ENA from providing commercial services to an entity other than the Department at any time. In fact, in its Opposition, ENA admits that it is constructing this state-wide private network with public funds claiming that the Commission permits this so long as the provider labels it "Internet access services."[3]

The notion of a start-up company receiving its entire network capitalization from the USF fund in the name of providing "Internet access" on its face violates basic Commission USF program policies and rules. As ISIS 2000's Objection clearly demonstrated, the Commission's rules permit schools to benefit from new internal connections, telecommunications services and Internet access. The rules do not permit start-up companies to receive full capitalization of commercial networks out of public funds. ENA's contract takes the Commission's intent for this program and turns it on its head.

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[2] See Attachment Q, Stapleton Analysis at 16.

[3] ENA Opposition at 13-14.

Under ENA's open-ended interpretation of the Commission's definition of Internet access, ENA could purchase a fleet of new Ferraris' and a helicopter as company vehicles and obtain reimbursement out of the USF fund because the new vehicles would be used to transport company engineers between its five major network points-of-presence (POPs).[4] Why not have the USF fund pay for this too, as it would only add a few million dollars to the ENA contract, would reduce engineer response time for trouble shooting at the POPs, and improve employee morale, ultimately increasing the quality of Internet access in the schools?

The reality is, ENA's contract with the Department is not far from this description. At the end of the contract term, ENA will end up with an extremely valuable, state-wide commercial telecommunications network, and the Department, who the USF fund is really supposed to benefit, will have nothing. The following chart compares the ENA and ISIS 2000 proposals with respect to:

1) the amount charged to the Department and the USF fund for Internet access services over 3.5 years

2) the estimated valuation of the network to the Department at the expiration of 3.5 years; and

[4] Government contracting programs for the purchase of services from private service providers typically carefully screen what costs may be included as an "allowable cost." See e.g. California v. Health Care Financing Administration, 132 F3d 55 (Fed. Cir. 1997). Not only has no such screening been done in this case, but the Department and ENA take the converse view that USF funds are required to be extended to anything included under the designation "Internet Access" unless a specific FCC rule prohibits it. This is an incorrect view of FCC USF funding rules.

3) the estimated valuation of the network to ENA at the expiration of 3.5 years.

	ENA	ISIS 2000
Charges by Contractor to Public Funds For Department Internet Access Services	$ 74,352,941	$ 10,750,000[5]
Valuation of Network to Department after 3.5 Years	$ 0	$ 45,000,000[6]
Valuation of Network to Contractor after 3.5 Years	$ 60,000,000 to $160,000,000[7]	$ 0

As the chart illustrates, ENA will actually charge the Department and the USF fund approximately $63.6 million more than ISIS 2000 would for substantially identical "turn-key"[8]

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[5] On behalf of the Department, ISIS 2000 will complete all systems integration work necessary to provide the "turn-key" solution requested by the Department in its RFP, including:

- ordering all necessary equipment, telecommunications and Internet backbone bandwidth;
- installing all necessary equipment and telecommunications connections;
- providing a centralized billing function for all schools; and
- management and operation of all network components.

Of the $51.1 million ISIS 2000 proposal, approximately $40.4 million are one-time and recurring pass-through costs incurred by ISIS 2000 in acquiring equipment, telecommunications services and Internet backbone bandwidth on behalf of the Department's network. ISIS 2000's actual total charges to the Department for providing all the requested services is therefore approximately $10.75 million over 3.5 years.

[6] See Stapleton Analysis at 16.

[7] See Id. The Stapleton Analysis estimates that a commercial Internet concern with a network similar to the one ENA will own which has a single customer (such as the Department) producing approximately $20 million in revenues per year would sell in an arms-length transaction anywhere between 3x and 8x revenues, or between $60 million to $160 million.

[8] The Department's post-bid evaluation rationalization that it selected ENA's proposal over ISIS 2000 because ENA would privatize the

Internet access services, including network equipment and bandwidth upgrades, maintenance, operation, and centralized ordering and billing functions over a period of 3.5 years. Further, under the ENA contract, the Department will end up with no network at the end of the contract term, and will be placed in the potentially precarious position of having to negotiate to continue service from ENA over a private network which was entirely paid for by public funds or find other new alternatives.

Under ISIS 2000's proposal, the Department would obtain all Internet services requested in its RFP over 3.5 years, have its network completely managed by ISIS 2000 for a charge of approximately $10.75 million, and would maintain legal title to the network. At the end of the 3.5 year period, the network would be worth approximately $45 million to the Department, who would be free to either renew a services contract with ISIS 2000, or put the service back out for bid.

Although the USF fund is intended to subsidize cost-effective equipment and services solely for the benefit of schools, in this case, ENA will be the real winner, ending

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Department's network, thereby taking the responsibility for network management completely out of the Department's hands is a distinction without any merit. See Department Opposition at 3-5. As the Stapleton Analysis suggests, whether the Department owns the network or not, where it is fully managed such as under the ISIS 2000 proposal, the Department would be at absolutely no disadvantage. See Stapleton Analysis at 9. Under ISIS 2000 management, the Department would be provided a "turn-key solution" and have absolutely no responsibility for the network just as if it did not own it. However, as illustrated in the above chart, the Department would retain ownership of an extremely valuable asset.

up with a state-wide, privately-owned telecommunications network entirely capitalized by public USF funds, with an estimated market valuation between $60 and $160 million after 3.5 years. There is no way this scheme can be found to be in the "public interest," and eligible for USF funding.

The USF fund is not an invitation for this type of abuse. ENA has concocted a fraudulent scheme to fund the construction of a privately-owned statewide network having substantial commercial capabilities and value beyond that necessary to serve the Department's needs through an illusory wash transaction creating over $16 million in excess USF funding. Typically, government regulatory programs such as Medicare, which rely on the good faith conduct of participating service providers in submitting claims, include provisions to disqualify errant service providers found guilty of a fraudulent abuse of the system. See Rand, M.D. v. Parales, 737 F.2d 259 (2d Cir. 1984).[9] Consistent with this fundamental administrative precept, the Commission should immediately commence administrative proceedings to consider the disqualification of ENA from

[9] The government is also required to disqualify participating service providers where it is found the provider has misrepresented the services which it will provide in order to win the bid. See Syorex Info. Systems, Inc. v. Air Force, GSBCA No. 13597-P (1996). As shown below, ENA has represented that it will provide a level of service similar to Bellsouth in order to win the bid. As illustrated below, however, this is simply not true. See Section III, infra.

further participation in the USF Schools and Libraries funding program.

III. The ENA Contract Overcharges Public Funds For The Level Of Internet Service To Be Provided

In their respective Oppositions, ENA and the Department both claim that ENA will provide the Department the lowest cost, best quality Internet access available. Specifically, ENA argues that it will provide "Internet access" for $984 per site[10] which, in comparison with "similar" BellSouth.net service of $2,500, is a "substantial savings."[11] The reality is that ENA's $984 per site figure is deceiving and its comparison to BellSouth.net service is fundamentally flawed.

As a threshold matter, for purposes of making general comparisons, "Internet access" is not simply some finite, measurable product like a paper clip. Internet access is a service which comes in many different shapes and sizes. Internet access may be purchased in quantities as small as

[10] This $984 cost per site is significantly different than the $1,106 cost per site figure ENA submitted to the Department as part of its original Cost Proposal. This is likely because ENA is now basing its cost per site on 1800 sites versus 1600 quoted in its original proposal. See Objection, at Attachment H. For purposes of this Reply, ISIS 2000 will base its discussion on a comparison which assumes ENA will provide Internet service to 1600 schools as specified in its proposal.

[11] ENA Opposition at 10.

28 kbps over analog dial-tone lines, or as large as 622 Mbps over point-to-point OC-192 digital connections.[12] It may be purchased from Tier 1 Internet backbone providers such as MCI, Sprint and WorldCom, which usually provide the purest bandwidth, or from ISPs such as BellSouth.net or other entities at multiple tier levels downstream from Tier 1 backbone carriers which typically sell the most diluted bandwidth.

ENA lists a cost per site figure of $984 but provides absolutely no explanation regarding exactly what the cost represents in terms of the quantity or quality of the Internet service, and attempts to represent that its service will be similar to BellSouth.net's tariffed point-to-point guaranteed throughput 1.54 Mbps T-1 Internet access service. These comparisons are simply preposterous.

First, ENA's charge to the Department and USF fund for delivery of Internet service in most of Tennessee's schools will be substantially greater than $984. The reason is that of the total $74.4 million contract, approximately $67 million will be used to provide Internet bandwidth upgrades (presumably T-1) to only about 800 of 1600 schools. The remaining $7.4 million of the $74.4 million contract price will be applied to the provision of substantially less

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[12] Typical connection types and (speeds) are as follows:

- dial-tone line (28 kbps-56 kbps);
- integrated services digital network ("ISDN") (128 kbps-256 kbps);
- T-1 (56 kbps-1.54 Mbps); and
- DS-3 (up to 45 Mbps)

costly dual ISDN Internet connections in the remaining 800 schools. Therefore, as shown below, ENA's cost comparison to BellSouth T-1 service should only be based on ENA's charges to provide T-1 upgrades in 800 schools for the proposed $67 million.

Under the contract, ENA will upgrade approximately 50% of the schools to no more than a 256 kbps dual ISDN connection.[13] As part of the ConnecTEN network program, all schools in Tennessee currently have an ISDN capable router and at least one 128 kbps ISDN Internet connection, and some already have dual (256 kbps) ISDN Internet connectivity. The schools currently pay the Tennessee Regulatory Authority specially tariffed price of $60 per month for a single ISDN connection (or $120 for dual ISDN) for local loop costs from the school router to the County Seat POP router, plus a small pro-rata share for Internet access at the County Seat. The following chart shows what should be ENA's approximate charge per school for dual ISDN Internet access and total cost over 3.5 years for 800 schools assuming each is upgraded to dual ISDN on the first day of the contract at the current tariffed charge of $120 per month per school and $100 per month for Internet bandwidth[14] on the lines.

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[13] Attachment R to this Reply summarized the ENA Proposal for bandwidth upgrades at all school locations.

[14] This reflects a reasonable estimate of the average cost of Internet access bandwidth on a 256 kbps dual ISDN line. See Stapleton Analysis at 8.

ENA Projected Charges For ISDN To 800 Schools

	Per School Per Month	Total For All Schools Over 42 Months
ENA Charges For Dual ISDN Internet Access In 800 Schools	$ 220	$ 7,392,000[15]

Since ENA should be charging the State and the USF fund approximately $7.4 million to provide half the schools with dual ISDN Internet access as it proposes, it will thus actually charge approximately $67 million to connect the remaining 800 schools with some other type of upgraded connection to the Internet (presumably T-1). When the true picture with respect to ISDN connectivity is considered, the average cost per site to the Department and the USF fund for some type of Internet access at the other 800 schools is actually approximately $1,994 per site.[16] Taking this factor into account, a more realistic comparison with BellSouth.net begins to emerge:

[15] Id.

[16] $67,000,000 ÷ 800 schools ÷ 42 months = $1,994.

ENA/BellSouth.net Revised Cost Comparison

	ENA	BellSouth.net
1 Site	$ 1,994	$ 2,500
42 Months	$ 83,750	$ 105,000
800 Sites	$67,000,000	$84,000,000

But this is still not a true comparison. In addition to masking its true cost per site, simply put, ENA is actually comparing apples to oranges in attempting to equate its service to BellSouth.net's tariffed full T-1 service. When stripped down to the bare bones, ENA is not providing the Department with a level of Internet service comparable to the BellSouth tariff offering.

BellSouth.net is a Tier 2 Internet backbone carrier in the State of Tennessee, buying substantial Internet backbone bandwidth directly from upstream Tier 1 backbone providers. Under its contract with the Department, ENA will actually be providing Internet bandwidth to the schools as a Tier 4 backbone provider, four (4) levels below the Tier 1 backbone carriers. The following illustrates the hierarchy with respect to the flow-through of Internet bandwidth from its origination at a Tier 1 backbone carrier down through several levels to the schools as will be provided by ENA:

Level 1 - Tier 1 Internet backbone providers sell all "virgin" Internet bandwidth and guarantee measured throughput downstream.

Level 2 - BellSouth.net purchases substantial quantities of Internet bandwidth from Tier 1 backbone carriers, is a Tier 2 backbone carrier, and guarantees measured throughput downstream.

Level 3 - State of Tennessee buys some quantity of Internet bandwidth from BellSouth.net, is a Tier 3 backbone carrier, but does not guarantee measured throughput downstream.

Level 4 - ENA buys a single T-1 Internet bandwidth connection for each County Seat POP from the State of Tennessee, and is a Tier 4 backbone provider. ENA does not receive guaranteed measured throughput from the State and cannot guarantee measured throughput downstream.[17]

Level 5 - Approximately 17 schools[18] share a single ENA T-1 Internet connection at each of 95 ENA County Seat POPs, connecting a total of 1600 schools.

Even assuming that at an average County Seat POP ENA will have a T-1 Internet bandwidth connection purchased from the State with a guaranteed throughput of 1.54 Mbps (which they will not), the average number of 17 schools connected to that POP would only be guaranteed an average share of approximately 90 kbps each of Internet access bandwidth from the T-1 (far less than even a single 128 kbps ISDN connection).[19] Nonetheless, ENA will charge at least half the schools $1,994 per month for a T-1 Internet connection

[17] Under ENA's contract with the State, ENA agrees to buy its Internet backbone bandwidth from the State consisting of 95 T-1 Internet connections (one connection to each County Seat POP) over the life of the contract at a cost of $2,013,200 per year or approximately $1,766 per month per POP. See Objection, Attachment N at A.11.12.

[18] 1600 schools ÷ 95 T-1's = approximately 17 schools per T-1.

[19] 1.54 Mbps ÷ by 17 schools = 90 kbps per school.

and the remaining schools $220 per month for a dual ISDN Internet connection.[20]

ENA's charges to the Department and the USF fund for this level of Internet connectivity is exorbitantly expensive. As specified above, the typical cost of 256 kbps guaranteed throughput Internet bandwidth is approximately $100, not including local loop costs. ENA cannot guarantee more than approximately 90 kbps to each of the 17 schools sharing a single Tier 4, T-1 Internet bandwidth connection at the County Seat POP. At most, the average cost of Internet service of this quality and quantity should be approximately $650.[21] The following chart illustrates a more accurate comparison of ENA with BellSouth.net assuming half the schools pay $120 per month for ISDN local loop costs, half pay $550 per month for T-1 local loop costs, and all schools would share a single BellSouth.net T-1 Internet bandwidth connection at each County Seat POP instead of a State T-1 Internet bandwidth connection as is the case under the ENA contract:

[20] Although ENA will pay only $1,776 per month to the State for its backbone Internet access at each County Seat POP (see fn. 17 above), ENA will charge approximately $18,819 (8.5 x $1,994 + 8.5 x $220) per month to approximately 17 schools at each POP over the life of the contract.

[21] This reflects the average cost of a T-1 local loop from the telephone company ($550), plus approximately $100 for 256 kbps guaranteed throughput backbone Internet bandwidth. See Stapleton Analysis at 8. Notwithstanding this assumed average T-1 local loop price of $550 for purposes of this analysis, under the ISIS 2000 proposal, the State would pay approximately $285 per month for a T-1 local loop in every school (see Section III, infra).

True ENA/BellSouth.net Average Cost Comparison for Comparable Internet Services to 1600 Schools

	ENA	BellSouth.net
1 Site	$ 1,106	$ 482[22]
42 Months	$ 46,470	$ 20,246
1600 Sites	$74,352,941	$32,394,352

When the true picture emerges, ENA will charge the Department and USF fund approximately $42 million more for the comparable level of Internet service over the 3.5 year contract term than is available in the competitive market.[23] ENA's comparison to BellSouth.net is just another attempt to disguise and obscure its overall plan to have construction of its private commercial network fully capitalized by public funds.

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[22] This figure is arrived at by the following equation:

$550 (monthly cost of local loop T-1) x 8.5 (1/2 of 17 schools) +
$120 (monthly cost of ISDN local loop) x 8.5 (1/2 of 17 schools) +
$2,500 (monthly cost of BellSouth.net Internet T-1) ÷ 17 schools
= $482 per school per month.

[23] The Stapleton Analysis demonstrates an additional comparison between the cost of the Tier 4 Internet service which will be provided under the ENA contract versus the cost of providing direct Tier 2 Internet service to 1600 schools (800 dual ISDN connections and 800 T-1 connections), where the Tier 2 provider does not connect to the County Seat POPs and provides direct guaranteed throughput connectivity into every school, a far better quality level of Internet access than ENA will provide. The Analysis demonstrates that the total cost of guaranteed throughput, fully managed direct Internet service to 1600 schools would be approximately $54 million, or over $20 million less for superior quality Tier 2 Internet service than ENA will charge for Tier 4 service. This result is astonishing since typically superior quality Tier 2 service should be far more expensive than Tier 4 service. See Stapleton Analysis at 8-9.

IV. The Simple Label "Internet Access" May Not Be Used As A Guise To Fund The Purchase Of Ineligible Wide Area Network Equipment

As ISIS 2000 has demonstrated in its Objection and this reply, the ENA contract is a clever but egregious scheme to have the USF fund capitalize the construction of ENA's private state-wide telecommunications network under the guise of providing "Internet access" to the Department. Not only does this overall scheme violate fundamental Commission USF program rules and policies and the public interest, but the scheme would have the USF fund pay for clearly ineligible wide-area network equipment which, if requested directly by a school or library would not qualify for funding. As shown in our initial petition, this includes five (5) major "Education Hub Site" POPs, caching servers, and ISDN lines ineligible for USF subsidy purposes

With respect to ineligible ISDN Circuits in particular, ISIS 2000 explained in its Objection that ENA had improperly included in its proposal recurring charges for ISDN circuits that had already been installed and were already subject to a special discounted tariff approved by the Tennessee Regulatory Authority ("TRA"). The Objection referenced a transcript from a TRA meeting on February 3, 1998, during which TRA Director Melvin Malone stated that "some services," including ISDN, "are already provided discounts in accordance with the state approved plans" and that "[f]or these services, school and libraries will have the

opportunity to choose the state or federal discount, whichever is greater." (See ISIS 2000 Opposition, Attachment M.)

ENA and the Department argue in response that this statement was just one TRA director's opinion, and that the motion voted upon by the TRA was more simply to "continue to require tariffed discounts for schools and libraries." However, the context of Director Malone's statement makes clear that the other two directors agreed not only with his motion, but also with his explanatory statement. Director Malone's statement that schools and libraries must choose between the state and federal discount was an integral element of, and led directly into, his more formal motion at the end of his statement. The other two directors immediately stated that they "agree" and the TRA moved on to other business.

The State and ENA then argue that even if that is the TRA's position, it is inconsistent with the FCC's decision in the Fourth Reconsideration Order that USF discounts should be applied "prior to the application of any state-provided support for schools and libraries." However, the cited provisions of the Fourth Reconsideration Order (¶194) merely address the method of calculating the USF discount and, at most, acknowledge that some covered services may also be subject to state funded subsidies. Nothing in the provisions relied upon by the State and ENA address discounted tariffs (which do not involve expenditure of

state-controlled funds) or suggest that such discounted services could also be subject to a USF discount.

V. ISIS 2000's Bid Provides a Valid Basis to Measure the Cost Effectiveness of the ENA Contract. ISIS 2000 Did Not Propose A More Expensive, Far Less Extensive And Lower Quality Scope Of Services

Along the same lines, both ENA and the Department further contend that ISIS 2000's bid proposal cannot be used as a "benchmark" for comparing the lawfulness of ENA's contract for USF funding purposes because the ISIS 2000 bid was, in fact, more expensive and proposed less extensive, lower quality services. (ENA Opposition, pp. 9-12; Department Opposition, pp. 9-11). These allegations are no more than post-bidding rationalizations constructed after-the-fact to defend the award of the contract to ENA. They are contradicted both by the record before the Department and the Department's own pre-award evaluation of ISIS 2000's proposal.

As to cost, Attachment S sets forth ISIS 2000's basic cost proposal (both its basic proposal using the State's backbone and optional proposal using commercially provided backbone services) submitted to the Department on February 25, 1998. This proposal, as summarized in our initial Objection and Petition, committed ISIS 2000 to provide services for the following costs:

ISIS 2000 Bid Proposal

	State Backbone Use	Optional Commercially Available Backbone
State	$17,653,709	$17,640,035
Proposer Provided[24]	295,400	295,400
USF	33,196,659	32,460,810
Total	$51,145,768	$50,396,245

The different (and dramatically higher) figures now cited by the Department and ENA flow entirely from calculations done by an unknown party (see ENA Opposition, Attachment 3, Exhibit 4) based on a supplemental submission of ISIS 2000 (see Department Opposition, Attachment B, Exhibit 4) which included several obvious errors on ISIS 2000's part in the presentation of cost data for the initial six months of the contract period. Essentially, this supplemental submission erred in including Totals for three columns labeled "Estimated One Time Cost per Site," "Estimated Monthly Cost per Site" and "Estimated Total 6-Month Cost per Site." The totals in these columns are meaningless numbers since they do not take into account the

[24] As indicated in ISIS 2000's Objection, this represents the purchase of existing ConnecTEN equipment at appraised salvage value which was not treated as a reimbursable USF expense in ISIS 2000's bid proposal. As with the ENA proposal, the equipment would continue to be used pending the switch-over to new equipment at all locations.

number of sites involved. Rather, this is done in the column to the immediate right of each column in which the per site cost is multiplied by the number of sites to produce the following correct figures:

Estimated One Time Prediscount Costs	$3,515,645
Estimated Monthly Prediscount Costs (for 6 months)	$4,376,223
Estimated Total 6-Month Prediscount Costs	$7,890,888

A corrected version of ISIS 2000's supplement submission depicting these simple corrections is included as Attachment T.

These errors are so obvious that it is surprising the Department and ENA would even attempt now to defend the bid award on the basis of an alleged higher cost of ISIS 2000's proposal. This line of argument, among other things, is completely refuted by the Department's own pre-award evaluation of the cost aspects of ISIS 2000's proposal (ISIS 2000 Objection, Attachment D), which did not even mention these allegedly higher costs, let alone evaluate ISIS 2000's bid proposal on the basis of these purported costs.

Further, the Department is flawed in its assertion that ISIS 2000's "school-based telecommunications costs alone would exceed $42 million."[25] The Department was made aware through the local bid evaluation process that ISIS 2000 working closely with BellSouth had developed an extremely

[25] See Department Opposition at 10, fn. 7.

innovative and cost-cutting approach to providing T-1 Internet connectivity within 18 months to every school. ISIS 2000 and BellSouth engineers developed a network plan that would bring the average cost of T-1 local loop circuits for every school to approximately $285 per month per school, or a total charge to the Department of approximately $19.2 million over the 3.5 years.[26] The Department's assertion is just plain wrong.

As to extent and quality of services, again the record speaks for itself. Under its Request for Proposals (RFP), the Department established a procedure to screen bids to determine compliance with mandatory proposal requirements and evaluate only those proposals determined to have met the RFP's requirements.[27] Under these standards, ISIS 2000's

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[26] See Attachment U, memorandum from Alan Hill of BellSouth describing the annual costs for local loop services to all schools. The $285 cost average consists of the combined average cost of frame relay T-1 local loops ($2,828,928 per year) and point-to-point T-1 local loops ($2,676,348 per year) which ISIS 2000 would provide in all 1600 schools in place of ISDN. Id. Under ISIS 2000's proposal all existing ISDN would be replaced by T-1 service within the first eighteen (18) months of the contract because it is a faster, higher bandwidth and more reliable service. While ENA's proposal admits that T-1 service is superior to ISDN, ENA will maintain ISDN connectivity in approximately half the schools. See Objection, Attachment K, ENA Proposal at 43. See also Section III and fn. 13, supra.

[27] Specifically, Section 6.2 of the RFP (ISIS 2000 Objection, Attachment E) provided as follows:

"6.2.3 All proposals shall be reviewed by the RFP Coordinator to determine compliance with mandatory proposal requirements as specified in this RFP. If the RFP Coordinator determines that a proposal may be missing one or more such requirements, the Proposal Evaluation Team shall review the proposal to determine if it meets minimal requirements for further evaluation; if the State shall request clarification(s) or correction(s); or, if the State shall determine the proposal non-responsive and reject it. [citation omitted]